IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2023

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THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P.No.10476 of 2021

Dr.R.Sekar ... Petitioner

Vs.

1. Pondicherry Engineering College,
Rep by its Chairman,
Governing Body,
Pillaichavadi, Puducherry 605 014.

2.Department of Pension and
Pensioners' Welfare,
Ministry of Personnel, Public Grievances
and Pension Government of India,
Loknayak Bhavan,
Khan Market, New Delhi 110 003.

3.Union Territory of Puducherry,
Rep by the Director cum Secretary
to Governing Body of Pondicherry
Engineering College (PEC),
Directorate of Higher and Technical Education,
Lawspet, Puducherry 605 008.

4.Pondicherry University,
Rep by its Registrar,
Bharat Ratna Dr.B.R.Ambedkar
Administrative Buildings,
R.V.Nagar, Kalapet, Puducherry 605 014.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records and proceedings relating to the order dated 02.12.2019 bearing No.PEC/EStt.(T)/E1/Speaking Order/2019/No.2670 passed by the 1st respondent and quash the same as illegal and consequently direct the respondents 1 to 3 to forthwith release to the petitioner his pension benefits with effect from 30.06.2016, the date of superannuation of the petitioner together with accruals in terms of the O.M. of Ministry of Personnel, Public Grievances and Pensions (No.4/1/87 PIC-I dated 01.05.1987) as well as the option letter of the petitioner dated 12.07.1999 opting for GPF Scheme.

For Petitioner	: Ms.G.Shanthi Meenakshi
For Respondents	: Mr.R.Syed Mustafa, SGP (Pondy) for R1 to R3
	: No appearance for R4

ORDER

This Writ Petition has been filed seeking issuance of a Writ of Certiorarified Mandamus, to call for the records and proceedings relating to the order dated 02.12.2019 bearing No.PEC/EStt.(T)/E1/Speaking Order/2019/No.2670 passed by the 1st respondent and quash the same as illegal and consequently direct the respondents 1 to 3 to forthwith release to the petitioner his pension benefits with effect from 30.06.2016, the date of superannuation of the petitioner together with accruals in terms of the O.M. of Ministry of Personnel, Public Grievances and Pensions (No.4/1/87 PIC-I dated 01.05.1987) as well as the option letter of the petitioner dated 12.07.1999 opting for GPF Scheme.

2. Heard Ms.G.Shanthi Meenakshi, learned counsel for the petitioner and Mr.R.Syed Mustafa,, learned Special Government Pleader appearing for the respondents 1 to 3.

3. The petitioner is employed as Maths Professor in the first respondent College. At the time of appointment, the petitioner opted to get the benefit of CPF scheme instead of GPF scheme. Subsequently, the Central Government has passed a scheme in order to enable all the Central Government Servants to switch over to old pension scheme from Contributory Pension Scheme. The significant aspect of the scheme is extracted below:

> *"3. All CPF beneficiaries, who were in service on 01.01.1986 and who are still in service on the date of issue of these orders will be deemed to have come over to the pension scheme.*

> *3.2. The employees of the category mentioned above will however have an option to continue under the CPF Scheme, if they so desire. The option will have to be exercised and conveyed to the concerned Head of Office by 30.09.1987 in the form enclosed if the employees wish to continue under the CPF Scheme. If no option is received by the Head of Office by the above date the employees will be deemed to have come over to the pension scheme."*

4. The petitioner joined the service in the year 1985. The petitioner is said to have covered under the said scheme and subsequently, he got selected as an Assistant Professor through direct recruitment in the first respondent College. Once again the petitioner has affirmed his willingness to continue under old pension scheme. The petitioner got retired in the year 2016. After the superannuation of the petitioner, the petitioner was not given with any pensionary benefits. Hence the petitioner has filed a Writ Petition in W.P.No.17499 of 2019 for seeking a direction. In the said Writ Petition, a direction has been issued to the first respondent on 16.09.2019. Thereafter, an order has been passed on

02.12.2019 by rejecting the petitioner's request for granting pension. Challenging the said order, the petitioner has filed this Writ Petition.

5. The learned counsel for the petitioner submitted that the petitioner is entitled to get pensionary benefits in view of the Central Government scheme already issued on 01.05.1987. Even in the job advertisement which was issued on 12.02.1998, it is stated that the selectees will be entitled to Central Government retirement benefits.

6. The learned Special Government Pleader submitted that the petitioner who had opted for Contributory Pension Scheme are re-designated as Assistant Professor on 02.06.1998. The direct recruitment came in the year 1999. Even prior to that, the petitioner was continuing as Assistant Professor and his services have been counted right from the year of appointment (i.e) in the year 1985. All of a sudden, the petitioner has given a request to switch over to old pension scheme in the year 1999. Since the petitioner who continued to be under Contributory Pension Scheme by appreciating the benefits available in the said scheme, cannot be switched over to any other scheme. Further, the first respondent is only a Society. Therefore, the petitioner cannot claim the benefits available to the Central Government employees. If the prayer of the petitioner is considered that would open flood gates for lot of such petitions filed before this Court.

7. So far as this petitioner is concerned, he was originally appointed in the year 1985 as Lecturer by undergoing a strict selection process of the first respondent. According to the learned counsel for the petitioner, though the petitioner had exercised his option to be under Contributory Pension Scheme, due to the subsequent scheme announced by the Central Government in the year 1987, he would automatically fall under the old pension scheme and he would continue to remain in the same after he was appointed through direct recruitment in the year 1999.

8. On perusal of the notification for direct recruitment also it is mentioned that AICTE scales with Central D.A. together with the retirement benefits applicable to the Central Government employees are implemented along with the U.G. and P.G. programme. The petitioner got an appointment in the year 1999 through direct recruitment. Even though the continuity of service was given to him, the first respondent cannot deny pension by stating that the petitioner is not entitled to the benefit applicable to the Central Government Service. The first respondent cannot claim that it is only a Society and hence the Central Government rule is not applicable and its employees cannot claim any benefits enjoyable by the Central Government servants. The law in this point is well settled in ***W.P.Nos.10993, 11015 and 11027 of 2020 dated 23.04.2021***. In the said judgment, it is held as under:

> *"38. This Court also finds that when the petitioners were sought to be admitted to CPF scheme at the time of their recruitment/appointment in terms of the Contributory Provident Fund Rules (India), 1962 which is again Government of India Rules applicable to the same Government servants who opted for the GPF benefits, it cannot be gain said that the 2nd respondent being a society can legitimately claim insulation from applicability of Government scheme, namely, the GPF. When CPF scheme of the Central Government is made applicable, the claim of the petitioners herein gets narrowed down only to see*

whether the CPF or the GPF is applicable to these petitioners. In that view of the matter, there cannot be any other conclusion by this Court except to hold that as between the two Government of India schemes, the GPF scheme alone is applicable to these petitioners. The objection that the society being the employer of these petitioners as a consequence of which, their status would suffer diminution would have no legal sanctity or relevance for the ultimate consideration of the petitioners' claim.

39. In the conspectus of the above judicial discourse, this Court is of the considered view that in all fours these petitioners have made out a clear case for grant of the relief.

40. In the said circumstances, this Court finds that the impugned order passed by 5th respondents is liable to be set aside as being illegal, unreasonable, discriminatory and violative of Article 14 of the Constitution of India and also it is violative of the law laid down by the Hon'ble Supreme Court and this Court.

41. In the result, the Writ Petitions are allowed the impugned proceedings of the 5th respondent in ID Note No.683/PONSHE/Estt/E1/2019 dated 18.11.2019 are hereby set aside. The respondents 1 and 2 are directed to bring the petitioners under the then GPF Scheme for the purpose of *grant of pension to these petitioners in accordance with CCS (Pension) Rules, 1972. The competent authority/respondents are directed to pass appropriate orders in this regard within a period of 8 weeks from the date of receipt of a copy of this order. No costs. Consequently, connected WMPs are closed."*

9. If the mistake on the part of the employer might create many litigations to be filed by several aggrieved persons that cannot be the taken as the reason for holding against the petitioner. She cited a decision of the Hon'ble Supreme Court held in the case of ***Calcutta State Transport Corporation & Ors Vs. Ashit Chakraborty & Ors***. In the said judgment, it is held as under:

"11. It is not in dispute that the respondent no.1 had exercised his right to receive pension under the 1990 Regulations in the year 1991. Thereafter, it was the duty of the Corporation to have given effect to the same. Merely because there were some wrong deductions from his salary and he was treated as member of the CPF Scheme, cannot be permitted to be raised as a ground to defeat his rightful claim. The

pension was to start after retirement of the respondent. When the same was not released to him, immediately representation was made by him. As no response was received from the appellant, the writ petition was filed. The argument that there are number of similarly situated employees who will also stake their claims, will not deter this Court in granting the relief to the respondent, which is legitimately due to him. Rather this argument shows that the Corporation was at fault in implementing the 1990 Regulations in the cases of number of employees though these were notified on 4.1.1991 and were given retrospective effect from 1.4.1984. Technical objections are sought to be raised, which are not tenable. For any fault on the part of the Corporation, the employees cannot be made to suffer."

10. However, the learned Special Government Pleader attracted the attention of this Court to the decision of the Hon'ble Supreme Court in the case of ***Union of India and Others Vs. M.K.Sarkar, reported in (2010) 2 SCC 59*** by submitting that in similar such situation arose in Indian Railways, the delay and laches has been taken against the petitioners and the relief sought by the petitioners therein was rejected.

"12. From 1980 onwards, gradually the pension scheme became more and more attractive as compared to the Contributory Provident Scheme, on account of various factors, like dearness allowance being included in the pay for computing pension, ceiling on pension being removed and liberalisation of family pension etc. But the respondent was well aware that not having opted for pension scheme and having received the PF amount on retirement, he was not entitled to seek switch over to pension scheme. But in 1996, when the respondent learnt that some others who had retired in and around 1973 to 1976 had been permitted to exercise the option in 1993-94 on the ground that they had not been notified about the option, he decided to take a chance and gave a representation seeking an option to switch over to pension scheme.

13. Having enjoyed the benefits and income from the provident fund amount for more than 22 years, the respondent could not seek switch over to pension scheme which would result in respondent getting in addition to the PF amount already received, a large amount as arrears of pension for 22 years (which will be much more than the provident fund amount that will have to be refunded in the event of switch over) and also monthly *pension for the rest of his life. If his request for such belated exercise of option is accepted, the effect would be to permit the respondent to secure the double benefit of both provident fund scheme as also pension scheme, which is unjust and impermissible. The validity period of the option to switch over to pension scheme expired on 31.12.1978 and there was no recurring or continuing cause of action. The respondent's representation dated 8.10.1998 seeking an option to shift to pension scheme with effect from 1976 ought to have been straight away rejected as barred by limitation/delay and laches."*

11. The petitioner opted to get back the contributions made by him towards Contributory Pension Scheme. Though he opted to get back his contribution, he refused to receive the contribution made by the Government under Contributory Pension Scheme. Once the petitioner is found to be entitled to be brought under old pension scheme, whatever contribution paid to the employees will be as similar to that of General Provident Fund contribution made by them, as how it is paid under the General Provident Fund contributions also to the employee on retirement. The petitioner has got back his own contribution for which he is eligible to get back. So, in my opinion, that will not stand in the way of considering the petitioner's claim for entitlement of pension under old pension scheme. What has to be determined in the case is whether the petitioner is covered under the old pension scheme in view of the Central Government scheme declared in the year 1987 and also subsequent direct recruitment in which the petitioner has been appointed as Assistant Professor with continuity of service.

12. In the judgment of the learned Single Judge, it has been clearly held that the respondents cannot seek shelter under the nomenclature of Society because the Society is also a limb of the Central Government and hence, they cannot state that they do not come under AICTE Rules. Even according to the notification issued by the first respondent, it has been categorically declared that the eligible selectees would be entitled to the benefit of old pension scheme. Hence, this petitioner is entitled for the relief as prayed.

13. In the result, this Writ Petition is allowed and the proceedings bearing No.PEC/EStt.(T)/E1/Speaking Order/2019/No.2670 dated 02.12.2019 passed by the first respondent is set aside and the first respondent is directed to consider the petitioner's claim for pension and pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order, in accordance with the Rules governing the old pension scheme applicable to the Central Government employees. No costs.

09.11.2023

Index : Yes
Internet : Yes/No
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To

1. The Chairman,
Pondicherry Engineering College,
Pillaichavadi, Puducherry 605 014.

2.Department of Pension and
Pensioners' Welfare,
Ministry of Personnel, Public Grievances
and Pension Government of India,
Loknayak Bhavan,
Khan Market, New Delhi 110 003.

3.The Director cum Secretary
to Governing Body of Pondicherry
Engineering College (PEC),
Union Territory of Puducherry,
Directorate of Higher and Technical Education,
Lawspet, Puducherry 605 008.

4. The Registrar,
Pondicherry University,
Bharat Ratna Dr.B.R.Ambedkar
Administrative Buildings,
R.V.Nagar, Kalapet, Puducherry 605 014.

R.N.MANJULA, J.

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